**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION.**

**CHAMBER SUMMONS NO. 1645 OF 2004**

**IN**

**SUIT NO. 997 OF 1983**

Direndra G. Kotak & anr. ..... Plaintiffs.

versus

Rajeshkumar @ Rajas Ratanchand
Doshi and others ..... Defendants.

And
Vinod Lalchand H. Doshi & ors .. Proposed defendants

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Mr. A.A.Kumbhakoni with Ms. Nutan Moily i/b. D.S.Sakhalkar for the plaintiff.

Ms. A.B.Kapadia i/b Daphtary Fereira & Diwan for Defendants 1 to 4.

Mr. C.M.Korde Sr. counsel i/b. Ms. N.S.Nippihai for Defendant no.6.

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**CORAM ; A.M. KHANWILKAR, J.**

**DATED; 31ST AUGUST, 2005**

**P.C.;**

1. Heard counsel for the parties. Perused the proceedings.

2. By this application plaintiffs seek to amend the plaint in terms of schedule I to the Chamber Summons. Essentially two amendments are proposed in the present

plaint. The first relates to the introduction of paragraph 24A in the plaint so as to assert that the plaintiffs are entitled to claim compensation and damages at Rs. 50 crores in place of Rs. 1.92 crores being the difference between the present market price and at the time of accrual of cause of action, of the said property. In addition, the plaintiffs seek to substitute the relief in regard to the claim of interest at the rate of 18% per annum instead of at the rate of 6% per annum as originally claimed. The counsel for the plaintiff relying on decision of the Apex court in **Nirmala Anand Vs. Advent Corporation (P) Ltd. and others reported in (2002) 8 S.C.C. page 146 and in Jagdish Singh Vs. Natthu Singh reported in (1992) 1 S.C.C. page 647,** contended that the amendment as is sought by the present application ought to be granted. It is submitted that the proposed amendment will not change the nature nor the original frame of the suit. The plaintiffs merely intend to substitute the amount of claim made in the suit and stead claim the prevailing market price of the land in question being Rs. 50 crores, by way of damages. It is submitted that such relief is in lieu of relief of specific performance and would be covered by proviso to sub section 5 of section 21 of the Specific Relief Act and therefore ought to be granted.

3. The counsel for the defendant on the other hand contends that the relief which is now claimed travels beyond the relief originally claimed in the suit. In the suit, the relief claimed with regard to damages is very specific, namely the value of the land when the cause of action had arisen being Rs. 1.92 crores; whereas by the proposed amendment the plaintiffs are introducing further claim after the date of cause of action till the suit is tried or till the decree, which relief was available to the plaintiffs, but not claimed in the suit as originally filed. It is contended that having failed to do so, it is not open to the plaintiffs to claim such relief by way of amendment. He has also submitted by relying on the decision of the Apex Court in **Muni lal Vs. The Oriental Fire & General Insurance Company Ltd reported in AIR 1996 S.C. page 642 (paragraphs 4 to 6)** that in so far as relief of interest is concerned, even that cannot be considered because the plaintiff has consciously crafted the claim in the suit as filed, claiming the interest at the rate of 6% per annum as the claim of damages and/or compensation, as will be seen from the particulars of claim Exh.T. It is further contended that in Ex.U being particulars of claim, the plaintiffs have consciously asked for higher interest rate at 15 % per

annum in respect of earnest money paid by the plaintiff to the defendant. Besides, no justification has been offered in the affidavit in support of the claim as to what prevented the plaintiffs to ask for higher rate of interest while instituting the suit, as is now claimed in the proposed amendment. On this submission, the learned counsel for the defendants contends that the application ought to be rejected.

4. Having considered the above submissions, I have no hesitation in accepting the submissions made on behalf of the defendants. It is seen that the plaintiffs are seeking to introduce further claim by way of damages and/or compensation, namely, the difference between the market price as of now and/or when the decree will be passed and at the time of accrual of cause of action of the said property on the basis of which suit has been based. In otherwords, in para 24 of the plaint, the plaintiffs have conciously confined the value of claim for compensation and/or damages as Rs. 1.92 crores being the difference in the market price at the institution of the suit and at the time of accrual of the cause of action and the agreed consideration for the sale of the said property. Instead, by way of proposed amendment, so as to introduce para 24A to the plaint, the plaintiffs claim compensation and/or

damages at Rs. 50 crores in place of Rs. 1.92 crores being the difference between "present market price" and the relief of compensation originally claimed in the suit. Accordingly the defendant has rightly contended that the plaintiffs seek to introduce further relief after the cause of action has accrued and claim set up in the suit, which relief would obviously be outside the purview of proviso to sub section 5 of section 21 of the Act. Besides, such relief was available to the plaintiffs and ought to have been claimed when the suit was originally filed; and having failed to do so, it is not open for the plaintiffs to ask for amendment at this stage that too after lapse of 20 years. The learned counsel has rightly pressed into service the decision in case of Munilal (supra), which has observed that the alternative relief which was available to be asked for when the suit was filed but not made, cannot be permitted by amendment. The relief which is now sought to be claimed is obviously barred and in any case as mentioned earlier, it is not open to the plaintiffs to introduce further relief.

5. Reliance was placed on the decision in Nirmala Anand's (supra) by the plaintiffs. The same has been rightly distinguished by the counsel for the defendants on the argument that in that case the court was called

upon to grant relief to the original owner of the property by providing enhanced consideration than provided in the agreement, while granting decree of specific performance. In that case the original amount provided in the agreement was Rs. 60,000/- whereas the Apex court observed that the original owner should be compensated by higher consideration in the sum of Rs.6,25,000/- as a condition to award decree for specific performance in favour of the plaintiff therein.

6. The counsel for the plaintiffs relying on the decision of the Apex Court in Jagdish Singh's case (supra) in para 16, would contend that if the amendment relates to grant of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his claim for specific performance, the court will allow the amendment at any stage of the proceeding. In the present case, however, the plaintiff has claimed the relief of compensation in lieu of or in addition to specific performance. The plaintiffs have conciously restricted that claim in the suit till the institution of the suit and for further claim of "interest only". In such a situation, the principle stated by the Apex Court in Muni Lal (supra) would preclude the Plaintiffs to later on introduce

relief of damages or compensation in lieu of or in addition to specific performance for a period after the institution of the suit.

7. In so far as the further relief of the interest at the rate of 18% per annum as proposed in terms of the amendment is concerned, I find substance in the objection taken on behalf of the defendant that even that cannot be granted. In the first place no reason whatsoever has been indicated as to why the plaintiffs have found it necessary to ask for enhancement of interest at the rate of 18% instead of 6% per annum as is the claim in the plaint. Besides, I find substance in the argument of the defendant that the plaintiffs have consciously asked for interest at the rate of 6% there is no reason why the plaintiffs can be permitted to ask for further interest by way of amendment. However, in so far as claim of the interest on the principal amount given as earnest money, the plaintiffs have consciously claimed interest at the rate of 15% per annum in the suit. Suffice it to observe that, there is no justification in permitting the plaintiffs to ask for further interest on the claim of compensation in lieu of specific performance. Even that prayer will have to be rejected.

8. Hence the Chamber Summons is hereby dismissed. No order as to costs.

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